UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/634,693	08/05/2003	Joseph F. Skovira	POU920030100US1	7585

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EXAMINER
ZHE, MENG YAO

ART UNIT	PAPER NUMBER
2195	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action **Before the Filing of an Appeal Brief**	**Application No.** *10/634,693*	**Applicant(s)** SKOVIRA, JOSEPH F.
	Examiner MENGYAO ZHE	**Art Unit** 2195

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED <u>16 September 2008</u> FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

   a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.

   b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

<u>NOTICE OF APPEAL</u>

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

<u>AMENDMENTS</u>

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will <u>not</u> be entered because

   (a)☐ They raise new issues that would require further consideration and/or search (see NOTE below);

   (b)☐ They raise the issue of new matter (see NOTE below);

   (c)☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

   (d)☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

   The status of the claim(s) is (or will be) as follows:

   Claim(s) allowed: *none*.

   Claim(s) objected to: _____.

   Claim(s) rejected: *1-3,6 and 7*.

   Claim(s) withdrawn from consideration: _____.

<u>AFFIDAVIT OR OTHER EVIDENCE</u>

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will <u>not</u> be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will <u>not</u> be entered because the affidavit or other evidence failed to overcome <u>all</u> rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

<u>REQUEST FOR RECONSIDERATION/OTHER</u>

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: <u>See Continuation Sheet.</u>

12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____

13. ☐ Other: _____.

/Meng-Ai An/
Supervisory Patent Examiner, Art Unit 2195

Continuation of 11. does NOT place the application in condition for allowance because: The applicant argued the following:
i) DeBettencourt does not teach a grid computing system since the servers are neither heterogeneous nor geographically distant from each other.
ii) DeBettencourt does not teach a scheduler in each system. Futhermore, the alleged scheduler does not schedule the serving of web pages by the associated web server. Instead, it is the manager that is responsible for it.
iii) DeBettencourt does not teach shadow time.
iv) DeBettencourt does not teach backfill schedule for claim 2.

The Examiner respectfully disagree with the applicant, as to point:
i) The claim defines a grid computing environment as "enabling virtualization of distributed computing and data resources to create a single system image from a plurality of systems...wherein the plurality of systems are at least one of heterogeneous and geographically distant from each other". DeBettencourt teaches a single system composed of plurality of systems, which are web servers (Column 3, lines 41-43). All web servers are distributed across the network, each providing data resources such as web pages to be presented to a user. All these distributed web pages from different web server systems may be aggregated together to form an application (Column 4, lines 54-60; Column 5, lines 1-8). Thus, DeBettencourt teaches multiple server systems that come together to share all their resources, consolidating individual resources into one single resources, which is essentially what a grid computing system does. More over, Debettencourt teaches that each server system can have either UNIX or Windows running on it, different number of network connections or different number of web servers (Column 4, lines 6-18) thus making it heterogeneous. Moreover, the hosts' physical locations do not matter according to Debettencourt (Column 3, lines 65-67), therefore, the hosts may be physically distant from each other.

ii) The applicant never specifically stated what the scheduler in each system is supposed to do other than the following two things: "obtaining scheduler information...from a scheduler..." (lines 4-6 of claim 1) and "a scheduler to schedule workload on its system" (line 14 of claim 1). Assuming that the applicant meant for the two schedulers to be the same scheduler, it seems that the scheduler only provides scheduling information and schedules workload. Debettencourt teaches an agent that provides scheduling information. Furthermore, this agent also receives commands or requests from the manager, to carry out workload management on its own server system. Even though these commands are received from some one else, the agent ultimately has to carry out the command of scheduling, thus the agent is qualified as a scheduler. On the other hand, the manager may simply put in a general request for the agent to manage the workload, and after receiving this request, it would still be up to the agent to manage the workload. In this sense, the agent is still qualified as a scheduler. If the applicant meant for the scheduler that is responsible for scheduling workload to be a different scheduler from the scheduler that provides scheduling information, DeBettencourt teaches that each system is equipped with either UNIX or Windows, both of which are operating systems which are inherently schedulers themselves. So either way, DeBettencourt does teach a scheduler for each system.

iii) The applicant argues that DeBettencourt teaches how long a job has to wait in the queue instead of how long before resources needed to execute the job will become available. The example given by the applicant to support the argument is that even if a job is next up in a queue, if the necessary resources are not available to run the job, then it cannot run. DeBettencourt teaches exactly this as he defines queue delay as being the amount of time a request waits before it is processed by a server (Column 13, lines 16-18). So using the applicant's example, even if a job is next up in the queue, according the DeBettencourt, if the server, which is considered to be a resource, is not available, this job would still be waiting in the queue, even thought it might be first in the queue, until the server or resource becomes available to process this job. Once the server does become available, it will indeed be the next up to get processed. So as long as the job is waiting for the server, DeBettencourt will track the waiting time, or as applicant terms it, the shadow time. The applicant seems to argue that DeBettencourt only teaches how long a job must wait in the queue before it becomes first in the queue. However, this is not the case, as explained above.
iv) The Examiner admitted in claim 1 that DeBettencourt does not teach backfill scheduling. However, Wood teaches backfill scheduling in Column 5, lines 16-40.